

STATE OF MICHIGAN
COURT OF APPEALS

MARK COWSERT,

Plaintiff-Appellant,

v

GREEKTOWN CASINO, L.L.C., d/b/a
GREEKTOWN CASINO,

Defendant-Appellee,

and

MICHIGAN GAMING CONTROL BOARD,

Intervening Defendant.

UNPUBLISHED

July 12, 2005

No. 260496

Wayne Circuit Court

LC No. 04-426026-CK

Before: Cooper, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiff Mark Cowsert brought this action in circuit court, alleging that he won a slot machine jackpot at defendant's casino, but that defendant refused to pay the winnings. Plaintiff asserted claims for breach of contract, negligence, and spoliation of evidence. Defendant Greektown Casino moved for summary disposition under MCR 2.116(C)(4), arguing that the circuit court lacked subject matter jurisdiction because plaintiff had not exhausted his administrative remedies before the Michigan Gaming Control Board ("MGCB"). The trial court agreed and dismissed plaintiff's action without prejudice. Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleges that he won a slot machine jackpot of \$13,757,317.37, but defendant refused to pay the winnings, claiming that the machine had malfunctioned. Defendant turned the slot machine over to the MGCB and plaintiff filed a claim with the board complaining of defendant's failure to pay the jackpot and possible tampering with the machine. While the matter was still pending before the MGCB, plaintiff filed this action in circuit court. The trial court agreed with defendant that the circuit court action should be dismissed because plaintiff had not exhausted his administrative remedies before the MGCB.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). It appears that the trial

court granted summary disposition under MCR 2.116(C)(4). Summary disposition for lack of jurisdiction under this subrule is proper when a plaintiff has failed to exhaust his administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. [*Service Employees Int'l Union, Local 466M v City of Saginaw*, 263 Mich App 656, 660; 689 NW2d 521 (2004).]

We agree with the trial court that plaintiff was required to first exhaust his administrative remedies before the MGCB. In *Papas v Gaming Control Bd*, 257 Mich App 647; 669 NW2d 326 (2003), this Court held that the Legislature intended to vest exclusive jurisdiction in the MGCB "over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry," even though the phrase "exclusive jurisdiction" does not appear in the legislation. *Id.* at 658-659. Where it is apparent that the Legislature intends "to endow the state agency with exclusive jurisdiction, courts must decline to exercise jurisdiction until all administrative proceedings are complete." *Id.* at 657. Once a plaintiff exhausts his administrative remedies before the MGCB, the circuit court can then exercise limited judicial review pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* *Pappas, supra* at 665-666. See also MCL 432.217.

Contrary to plaintiff's argument, an aggrieved casino patron has an available remedy before the MGCB. The MGCB has adopted administrative rules for the conduct of gaming operations, 1998 AACRS, R 432.1801 *et seq.*, including rules for resolving patron disputes. 1998 AACRS, R 432.11502. If the matter cannot be resolved by the casino, the patron has the right to file a complaint with the MGCB. The MGCB may investigate a complaint, if deemed necessary, and initiate disciplinary action. 1998 AACRS, R 432.11503.

Plaintiff also has a potential remedy for his claim that defendant destroyed evidence of his jackpot win by tampering with the machine. Plaintiff's claim related to the alleged destruction of evidence would qualify as a patron dispute under 1998 AACRS, R 432.11501 *et seq.* and, accordingly, should be resolved initially by the MGCB. Many of the administrative rules specifically address the integrity of the machines involved in gambling operations. The MGCB may decide to investigate the matter and has the right to impose disciplinary action against the casino, if appropriate. 1998 AACRS, R 432.11503. Further, 1998 AACRS, R 432.11108(2)(f) provides that in a disciplinary action against a casino licensee, the MGCB may, take "[a]ny other action deemed necessary by the board to ensure compliance with the act or these rules." Thus, if a patron has a legitimate claim to a jackpot that a casino wrongfully denied by tampering with the machine, that patron may be awarded the jackpot proceeds by the MGCB.

Defendant also argues that plaintiff's common-law claims are preempted by the Michigan Gaming Control and Revenue Act ("MGCR"), MCL 432.201 *et seq.* As a matter of law, we agree that plaintiff may not pursue common-law claims that are inconsistent with the

MGCRA. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 543-551; 683 NW2d 200 (2004).

Affirmed.

/s/ Jessica R. Cooper
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood